

Disclosure of evidence in relation to an action based on competition law infringements

Abstract

This thesis is about private competition law enforcement and its procedural aspects. The topic is analyzed in the context of transposition of the Directive on actions for damages for competition law infringements into Czech law. Specifically, the thesis analyzes disclosure of evidence in the context of information asymmetry between parties to a civil litigation. Information asymmetry is being understood in the thesis as a situation in which the information relevant for case of one party to a dispute is controlled by the other party, while latter does not have any incentive to introduce this information to the proceedings. Solution to this issue is analyzed by comparison with the solution utilized in the US system, which is unique in its reliance on private enforcement.

The thesis firstly introduces possible solutions to information asymmetry in the civil procedure and notes advantages and disadvantages of each solution. It also discusses the way these different solutions affect cost effectiveness of the proceedings. The thesis then continues to discuss American discovery in more detail; it describes its evolution and its criticism.

After this introduction of the American system, the thesis moves on to discuss the Directive itself, it describes tools contained in the Directive and provides critical reflection of these tools. The thesis discusses both the disclosure of evidence between the parties to a dispute and the disclosure of evidence held by public authorities. Regarding the disclosure of evidence held by authorities, the thesis also analyzes how the Directive balanced private and public competition law enforcement and sometimes contradictory interest of aggrieved parties on the one hand and public competition authorities on the other hand. It also notes that while the Directive is usually perceived as a tool for private litigants, it also provides strong protection for public enforcement. The thesis deals with the general issue arising out of harmonization through directives, which is non-uniform national legislation and its application.

Furthermore, the thesis discusses the Czech context of the Directive, and it frames information asymmetry as one of the important issues of the Czech civil procedure, which is

not being discussed very often. After introducing the context of the Directive, the thesis analyzes the transposition itself and pays special attention to the tools added by the Statute which were not included in the Directive. The thesis positively perceives some of these tools, such as the duty to pay an advance on costs and damages caused by the disclosure, positively.

In conclusion, the thesis compares requirements to be met by the requesting party in order to be able to access document production system in the American Civil Procedure and in the newly adopted Czech legislation. The thesis observes convergence of the wording of these standards, but also notes that there is still a substantial cultural difference, which may lead to rather divergent application of the seemingly similarly worded legislation. The thesis also compares the cost saving measures implemented by both systems in order to prevent unproportional costs. In this comparison the thesis concludes that the Czech regime provides better tools.